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GOVERNOR

STATE OF MAINE  
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES  
BOARD OF PESTICIDES CONTROL  
28 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0028

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COMMISSIONER  
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DIRECTOR

**BOARD OF PESTICIDES CONTROL**

**February 29, 2008**

State of Maine Performance & Training Facility (Conference Room, Lower Level)  
10 Mountain Avenue (off Route 201 going toward Skowhegan), Fairfield  
(Exit 133 from I-95)

**MINUTES**

**9:30 AM**

☒ Present: Eckert, Jemison, Simonds, Stevenson and Walton

1. Introductions of Board and Staff

☒ The Board, Staff and Assistant Attorney General Randlett all introduced themselves.

2. Minutes of the January 25, 2008, Board Meeting

Presentation By: Henry Jennings  
Director

Action Needed: Amend and/or approve

☒ Simonds/Jemison: Moved and seconded approval of the minutes

In Favor: Unanimous

3. Continued Discussion About Approaches to Address Public Concerns About Aerial Application

At the January 25, 2008, meeting, the Board reviewed written comments and staff memos about public concerns with aerial spraying. The Board directed the staff to develop proposals to improve the notification process for nearby residents, and to strengthen the requirements designed to ensure applicators spray the correct area. The Board will review the staff proposals and continue discussions about other areas for potential changes.

Presentation By: Henry Jennings  
Director

Action Needed: Review staff proposals and determine next steps

- ☑ Jennings began by reviewing the staff memo on notification and spraying the correct site. The issue of which rule chapter to incorporate new notification provisions for aerial spraying elicited little comment, with Board members accepting the staff premise that Chapter 28 was probably the better chapter. Jennings reiterated that the staff proposes combining Chapter 28 and Chapter 51 sometime in the future.

The Board then discussed the current notification provisions that apply to agricultural aerial spraying and how they might be improved. Jennings reiterated the staff proposal to create a definition of “sensitive areas likely to be occupied” so that improvements to current requirements for aerial spraying can be focused on protecting people from exposure. Board members continued to support this approach.

There was also general support for moving toward a two-tiered notification approach for aerial spraying. Under such a scheme, Tier 1 would require the agricultural land manager to send out an annual letter prior to the spray season informing abutters that aerial spraying may occur and of their right to receive more specific information about the timing of the applications if they so desire (Tier 2). The burden would then shift to the abutters to respond to the letter if more specific information is desired. Abutters would be entitled to a phone call providing advance notice of aerial spraying if they made such a request in their reply to the land manager.

The Board also discussed the appropriate distance between a target spray area and an abutting residence that would trigger the annual Tier 1 letter. The staff has proposed 1,000 feet, based on historical drift cases and interest from abutters. Board members queried the audience for input. There was no opposition to 1,000 feet, but distances greater than that would likely meet some resistance from the agricultural community.

A lengthy discussion ensued about how applicators handle advance notice when spraying is delayed due to poor weather or other problems. One member of the audience stated they simply call again. Board members brainstormed a whole array of ideas to address this concern including bulletin boards, field posting, websites, e-mail lists, flags or requiring the abutter to call a designated number for an update. There was little consensus around how to implement such approaches. They might be workable under certain circumstances, but would likely require agreement from both parties.

Finally, Board members discussed staff proposals for ensuring that the correct site is sprayed. The current requirement for identifying the correct site contained in Chapter 22 of the Board’s rules is somewhat vague and allows the aerial applicator to rely on “physical identification characteristics” clearly visible from the air. This standard could be interpreted to allow for the use of geographical features such as roads, houses and water bodies. Given the recent history of mishaps, the standard is deemed to be inadequate, especially in light of the advent of low-cost Global Positioning Systems (GPS).

Board members discussed the staff proposals. Simonds relayed that his experience demonstrates that geography looks entirely different from a low-flying aircraft. He took that position that there is no reason in this age to navigate based on surface characteristics that have an inherent potential

for misinterpretation by a pilot. Simonds recommended that improved requirement rely on either, (1) a geographical reference verified by onboard, electronic GPS, or (2) unique ground markings positioned by the land manager or his agent. Further Board discussion supported the widespread availability of low-cost options for obtaining electronic geographical references to a particular location.

Finally, the Board directed the staff to develop additional concepts for site planning and identification of sensitive areas for the next Board meeting. Simonds also suggested that the concepts that have been discussed to date could be distributed for additional stakeholder input.

4. Review of Board Definitions of Spray Contracting Firm

The Board's statutes and rules both contain definitions for "spray contracting firm," with the definition in rule containing slightly more detail. A couple of minor issues exist with both definitions. The first is that anyone who enters into a comprehensive maintenance contract that includes an agreement to have pesticide applications done, must obtain a firm license, even if they plan to subcontract any pesticide work to a licensed company. The second issue is that even sole proprietors must obtain a firm license if they are incorporated or part of a business partnership. The staff will present a memo outlining Board options to institute a more logical public policy.

Presentation By: Gary Fish  
Manager of Pesticide Programs

Action Needed: Determine whether to pursue any policy changes

- ☒ Fish reviewed the memo on spray contracting firms detailing the proposal to develop an interim compliance policy that further defines "spray contracting firm" consistent with conventional logic relating to professional contractors. Board members agreed with the intent of the staff proposal. Fish then outlined a secondary issue concerning the fees charged for a spray contracting firm license and a staff proposal to establish a sliding scale. Board members questioned whether the issue was significant enough to address at this time given the current set of priorities. Consensus was reached to direct the staff to develop an interim compliance policy further refining the definition of spray contracting firm, but to set aside the issue of the license fees for now.

5. Review of 2007 Planning Session Priorities

The Board held its annual planning session on October 26, 2007, during which it developed a list of potential discretionary tasks to work on. The Board has prioritized the list and will now review those priorities and discuss whether they want to direct the staff to initiate work on any of these tasks.

Presentation By: Henry Jennings  
Director

Action Needed: Determine whether to direct the staff to initiate work on discretionary tasks

- ☑ Jennings briefly reviewed the results of the Board's process for prioritizing discretionary tasks discussed at the annual planning session. Discussion of an annual summary of complaints is already on the current agenda, and slowing down on rulemaking is easily accomplished. Jennings suggested that measuring pesticide use had historically been problematic and resource-intensive for the staff. He relayed that there is some useful information about agricultural pesticide use, and there are annual summary reports from commercial applicators. A discussion ensued on measuring other types of pesticide use, especially trends relating to homeowner use. The staff reviewed recent attempts to summarize in-state sales of consumer products and the difficulties encountered. Simonds suggested a statistical sampling might be more practical. The staff agreed to research options and continue this discussion at future meetings.

Next the Board discussed the discrepancy between the State statutes and federal law affecting chemical control of vertebrate pests, especially rodents. State law limits chemical control of rodents to rats and mice, while federal law allows for control of a much broader range of vertebrate pest species, including moles, squirrels, groundhogs, etc. The discrepancy results in products being offered for sale that may be only partially legal to use, and poses problems for gardeners plagued by groundhogs. Consensus was reached to approach the Department about submitting a bill into the next session that would repeal the vertebrate control section of the Maine statute and just defer to the federal standard, as most states do.

6. Discussion of an Annual Summary of BPC Complaints

The Stakeholders Committee on Aerial Spraying and Drift produced a report containing an array of ideas designed to reduce or mitigate the impacts of aerial spraying. The Board discussed many of those ideas during their annual planning session. The idea of producing an annual summary of complaints received a fair amount of Board support. The Board will now review a staff memo on the subject and discuss its merits.

Presentation By: Raymond Connors  
Manager of Compliance

Action Needed: Determine whether to direct the staff to produce an annual summary and, if so, what the contents should be

- ☑ Connors reviewed current Board data elements being recorded in relation to pesticide complaints, and then asked Board members what type of information they are interested in seeing in a summary report. Simonds suggested sorting complaints by licensing categories, and possibly by the nature of the complaints. Eckert felt a summary would be useful to the Board in evaluating areas where rules might need to be strengthened. Consensus was reached to direct the staff to evaluate simple updates to the current data set that would facilitate a useful summary report.

7. Other Old or New Business

- a. Legislative Update – H. Jennings

- ☒ Jennings reported that the ACF Committee had conducted both a hearing and work session to review the major substantive rule amendments to Chapters 26 and 29 on February 25, 2008. Subsequently, they voted both resolves out as ought-to-pass.

b. Other ?

- ☒ Jennings also noted that a confirmation hearing for Deborah Aldridge is scheduled for March 12, 2008.
- ☒ Fish reported that he received a complaint from a lawn service customer who was irate at the Board's recently adopted rule and policy on verifiable authorization. The customer felt the State was being too intrusive.

8. Schedule and Location of Future Meetings

March 28 and May 2, 2008, are the tentative dates for the next Board Meetings. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- ☒ Board members agreed to add tentative meeting dates of June 13 and July 25, 2008

9. Adjourn

- ☒ Simonds/Walton moved and seconded that the meeting adjourn at 1:16 PM

In Favor: Unanimous